

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

**BRIAN DIEP, M.D.**

License No. 34428  
For the Practice of Allopathic Medicine  
In the State of Arizona.

Case No. MD-07-0085A

**CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND AND  
PROBATION**

**CONSENT AGREEMENT**

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Brian Diep, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement of any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any

1 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any  
2 other pending or future investigation, action or proceeding. The acceptance of this  
3 Consent Agreement does not preclude any other agency, subdivision or officer of this  
4 State from instituting other civil or criminal proceedings with respect to the conduct that is  
5 the subject of this Consent Agreement.

6 6. All admissions made by Respondent are solely for final disposition of this  
7 matter and any subsequent related administrative proceedings or civil litigation involving  
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
9 or made for any other use, such as in the context of another state or federal government  
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
11 any other state or federal court.

12 7. Upon signing this agreement, and returning this document (or a copy thereof)  
13 to the Board's Executive Director, Respondent may not revoke the acceptance of the  
14 Consent Agreement. Respondent may not make any modifications to the document. Any  
15 modifications to this original document are ineffective and void unless mutually approved  
16 by the parties.

17 8. If the Board does not adopt this Consent Agreement, Respondent will not  
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes  
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that  
21 will be publicly disseminated as a formal action of the Board and will be reported to the  
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise  
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force  
25 and effect.

1 11. Any violation of this Consent Agreement constitutes unprofessional conduct  
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order,  
3 probation, consent agreement or stipulation issued or entered into by the board or its  
4 executive director under this chapter") and 32-1451.

5 12. ***Respondent has read and understands the condition(s) of probation.***  
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BRIAN DIEP, M.D.

DATED: 7/20/07

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**FINDINGS OF FACT**

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 34428 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-07-0085A after receiving a complaint regarding Respondent's care and treatment of a sixty-four year-old old patient ("MG").

4. On December 18, 2003, MG presented to Respondent in an urgent care after suffering a horse bite injury to her finger. Respondent examined MG and listed the laceration as 5 cm with no foreign debris with MG's flexion and extension intact. Respondent repaired the laceration and discharged her on Augmentin. Respondent did not order an x-ray of her finger and he did not provide sufficient documentation explaining the reasons for not ordering the x-ray. Respondent also did not refer her to a hand or plastic surgeon for further evaluation.

5. On December 20, 2006, MG presented again to the urgent care with an infected hand. MG received an x-ray and was referred to the emergency room with a swollen left hand with erythema and tenderness of the index finger. MG presented the x-rays from the urgent care that demonstrated a displaced fracture of the proximal phalanx second digit left hand with dorsal displacement.

6. On that same day, MG underwent surgery to debride the wound and stabilize the fracture. The debridement and stabilization was performed again on December 21, 2006. MG was discharged on December 22, 2006.

7. When a patient presents with a horse bite wound, the standard of care requires a physician to appropriately evaluate and treat the patient including order x-rays

1 to rule out a fracture. If a fracture is diagnosed, the standard of care requires a physician  
2 to stabilize the fracture and refer the patient to a hand or plastic surgeon.

3 8. Respondent deviated from the standard of care because he did not  
4 appropriately evaluate and treat MG for a horse bite wound and failed to order x-rays of  
5 her finger to rule out a fracture. Respondent also did not refer MG to a hand or plastic  
6 surgeon.

7 9. As a result, MG's diagnosis of open fracture of the index finger was delayed,  
8 which required multiple surgeries and prolonged medical care.

9 10. A physician is required to maintain adequate legible medical records  
10 containing, at a minimum, sufficient information to identify the patient, support the  
11 diagnosis, justify the treatment, accurately document the results, indicate advice and  
12 cautionary warnings provided to the patient and provide sufficient information for another  
13 practitioner to assume continuity of the patient's care at any point in the course of  
14 treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because he did  
15 not provide sufficient documentation for not ordering an x-ray of MG's finger.

#### 16 **CONCLUSIONS OF LAW**

17 1. The Board possesses jurisdiction over the subject matter hereof and over  
18 Respondent.

19 2. The conduct and circumstances described above constitute unprofessional  
20 conduct pursuant to A.R.S. § 32-1401(27) (e) ("[f]ailing or refusing to maintain adequate  
21 records on a patient."); A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might  
22 be harmful or dangerous to the health of the patient or the public.") and A.R.S. § 32-  
23 1401(27)(ll) ("[c]onduct that the board determines is gross negligence, repeated  
24 negligence or negligence resulting in harm to or death of a patient.").

1 **ORDER**

2 IT IS HEREBY ORDERED THAT:

3 1. Respondent is issued a Letter of Reprimand for failing to appropriately  
4 evaluate and treat a patient with a horse bite injury to her hand and for failing to maintain  
5 adequate medical records.

6 2. Respondent is placed on probation for **one year** with the following terms and  
7 conditions:

8 A. Continuing Medical Education

9 Respondent shall within one year of the effective date of this Order obtain **ten**  
10 **hours** of Board Staff pre-approved Category I Continuing Medical Education (CME) in  
11 **hand injuries** and provide Board Staff with satisfactory proof of attendance. The CME  
12 hours shall be in addition to the hours required for the biennial renewal of medical license.  
13 The probation shall terminate upon successful completion of the CME.

14 B. Obey All Laws

15 Respondent shall obey all state, federal and local laws, all rules governing the  
16 practice of medicine in Arizona, and remain in full compliance with any court order criminal  
17 probation, payments and other orders.

18 C. Tolling

19 In the event Respondent should leave Arizona to reside or practice outside the  
20 State or for any reason should Respondent stop practicing medicine in Arizona,  
21 Respondent shall notify the Executive Director in writing within ten days of departure and  
22 return or the dates of non-practice within Arizona. Non-practice is defined as any period of  
23 time exceeding thirty days during which Respondent is not engaging in the practice of  
24 medicine. Periods of temporary or permanent residence or practice outside Arizona or of  
25 non-practice within Arizona, will not apply to the reduction of the probationary period.

3. This Order is the final disposition of case number MD-07-0085A.

DATED AND EFFECTIVE this 10<sup>th</sup> day of August, 2007.

(SEAL)



ARIZONA MEDICAL BOARD

By

A handwritten signature in black ink, appearing to read "Timothy C. Miller".

TIMOTHY C. MILLER, J.D.  
Executive Director

ORIGINAL of the foregoing filed  
this 10<sup>th</sup> day of August, 2007 with:

Arizona Medical Board  
9545 E. Doubletree Ranch Road  
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed  
this 10<sup>th</sup> day of August, 2007 to:

Brian Diep, M.D.  
Address of Record

A handwritten signature in black ink, appearing to read "Chris Sampa".

Investigational Review